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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 15, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 2:20-cr-00092-SMJ-1

Plaintiff,

v.

JOSE CONTRERAS-AGUILAR,

Defendant.

**ORDER DENYING
GOVERNMENT'S MOTION FOR
RECONSIDERATION**

The Court granted Defendant Jose Contreras-Aguilar's motion to suppress, finding the warrant issued in this case violated the Fourth Amendment. *See generally* ECF No. 47. The Government now moves for reconsideration. ECF No. 48. Finding no manifest error in its prior ruling, *see* L. Crim. R. 12(c)(5), the Court denies the Government's motion for reconsideration. This Order shall clarify and supplement the Court's prior Order granting Contreras-Aguilar's motion to suppress, ECF No. 47.

DISCUSSION

A. Particularity

The Government first asks this Court to reconsider its determination that the warrant lacked particularity. *See* ECF No. 48 at 2–4. Finding no manifest error, this

1 court denies the Government's request for reconsideration of this issue.

2 To begin with, the Court agrees with the Government that the search warrant
3 incorporated the attached affidavit. *See* ECF No. 48 at 2; *see also* ECF No. 47 at 8.
4 It also recognizes on reconsideration that the affidavit *did* specify that the
5 prerecorded buy money was U.S. currency. *See id.* Even so, it finds that fact does
6 not alter the outcome of its analysis. The Court disagrees with the Government's
7 argument that specifying the denomination of the bills adds no required particularity
8 to the search warrant. *But see* ECF No. 48 at 3. The Court also finds the Government
9 misconstrues the Court's Order. *See id.*

10 The Court did not determine particularity would be satisfied if the warrant
11 had listed only four \$100 bills *without* also including the buy money's prerecorded
12 serial numbers, as the Government reads its Order. *See id.* Instead, because the
13 warrant in question already included the buy money's prerecorded serial numbers,
14 the Court assumed the inclusion of serialized bills would be necessary to satisfy the
15 particularity requirement. Besides the serial numbers it assumed were required for
16 particularity, it determined that the warrant should have also listed the
17 denominations of the bills subject to seizure. Without specifying which
18 denominations of bills were subject to seizure, the Court found the warrant failed
19 to satisfy the Fourth Amendment's particularity requirement. See ECF No. 47 at 8–
20 9.

1 The Court determined a warrant authorizing a general search for all
2 denominations of U.S. currency (and requiring officers to review all the U.S.
3 currency found for the correct serial numbers) was not sufficiently particular,
4 because limiting the scope of the search to only the four \$100 bills bearing the
5 particular serial numbers was not only possible but easily achievable. *See United*
6 *States v. SDI Future Health, Inc.*, 568 F.3d 684, 702 (9th Cir. 2009) (“Warrants
7 which describe generic categories of items are not necessarily invalid if a more
8 precise description of the items subject to seizure is not possible.”)
9 (quoting *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986)). There was
10 no need to authorize a search for all denominations of bills because “the government
11 knew exactly what it needed and wanted”—that is, four \$100 bills bearing particular
12 serial numbers. *See VonderAhe v. Howland*, 508 F.2d 364, 370 (9th Cir. 1974). The
13 Court can only surmise that law enforcement omitted the denominations of the bills
14 from the warrant due to carelessness or to broaden the scope of the search. But in
15 either event, that error rendered the warrant fatally flawed.

16 In determining whether a warrant is sufficiently particular, the Ninth Circuit
17 has outlined three factors for consideration:

18 (1) whether probable cause exists to seize all items of a particular type
19 described in the warrant; (2) whether the warrant sets out objective
20 standards by which executing officers can differentiate items subject to
seizure from those which are not; and (3) whether the government was
able to describe the items more particularly in light of the information
available to it at the time the warrant was issued.

1 *United States v. Adjani*, 452 F.3d 1140, 1148 (9th Cir. 2006) (quoting *United States*
2 *v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986)). Here, probable cause did not exist
3 to search for and to seize all U.S. currency; it existed to search for and to seize only
4 the four \$100 bills bearing particular serial numbers used to complete the controlled
5 buy. Law enforcement knew the exact description of the money used in the
6 controlled buy. Yet the warrant and incorporated affidavit failed to identify the
7 denominations of bills. While that failure may not have affected the U.S. currency
8 ultimately subject to seizure (only the four \$100 bills bearing the particular serial
9 numbers), omitting the denominations of the bills improperly broadened the scope
10 of the *search*. As a result, the warrant broadly authorized a general, exploratory
11 search for all denominations of U.S. currency to determine whether such currency
12 bore the correct serial numbers. The Government could have easily described the
13 U.S. currency subject to seizure more particularly given the information available
14 to it when the warrant was issued. *See Adjani*, 452 F.3d at 1148. For these reasons,
15 the Government's motion for reconsideration of this issue is denied.

16 The Court also disagrees with the Government's arguments about the broad
17 category of unspecific documents subject to seizure under the dominion and control
18 authorization. *See* ECF No. 48 at 3. Contrary to the Government's view, ECF No.
19 48 at 3, a warrant cannot give law enforcement unfettered discretion (however
20 reasonably executed) to determine which items are subject to seizure. *See Adjani*,

1 452 F.3d at 1148; *accord United States v. Zemlyansky*, 945 F. Supp. 2d 438, 453
2 (S.D.N.Y. 2013) (quoting *United States v. Riley*, 906 F.2d 841, 844 (2d Cir. 1990))
3 (“Courts implement the particularity requirement by insisting that warrants not
4 ‘leave to the unguided discretion of the officers executing the warrant the decision
5 as to what items may be seized.’”). The warrant at issue provided no “objective
6 standards by which executing officers [could] differentiate [which dominion and
7 control documents were] subject to seizure from those which [were] not.” *See*
8 *Adjani*, 452 F.3d at 1148. The authorization here was not only vague but overbroad.
9 And the Government could have easily described the dominion and control
10 documents subject to seizure more particularly given the information available to it
11 when the warrant was issued. *See id.*

12 In *Spilotro*, 800 F.2d at 964, for example, the “warrant authorized, among
13 other things, the seizure of address books, notebooks, notes, documents, records,
14 assets, photographs, and other items and paraphernalia evidencing violations of the
15 multiple criminal statutes listed.” There, “[t]he government did not know, or at least
16 did not recite, the precise identity, type, or contents of the records sought.” *Id.* The
17 *Spilotro* court determined “a more precise description of the items sought was
18 possible,” and the “warrant should have named or described those particular items.”
19 *Id.* “For instance, the warrant might have authorized the seizure of records relating
20 to loan sharking and gambling, including pay and collection sheets, lists of loan

1 customers, loan accounts and telephone numbers, line sheets, bet slips, tally sheets,
2 and bottom sheets.” *Id.* (citation and internal quotation marks omitted).

3 This case is like *Spilotro*. Here, the general authorization allowed for the
4 search and seizure of “[d]ocuments tending to establish dominion and control of the
5 location to be search[ed] and of any items seized.” ECF No. 28-1 at 1. As for
6 documents establishing dominion and control of the premises, the warrant might
7 have authorized, for example, the seizure of titles, leases, mail, identification cards,
8 and the like. *See* ECF No. 47 at 9. As for documents establishing dominion and
9 control of the prerecorded buy money, the warrant might have authorized the seizure
10 of paper or electronic ledgers documenting the drug sale or phone records
11 documenting the drug sale with the confidential informant. *See id.* at 9–10. Like
12 *Spilotro*, 800 F.2d at 964, a more precise description of the dominion and control
13 documents that law enforcement sought was possible, and the “warrant should have
14 named or described those particular items.” *Id.* “By failing to describe with any
15 particularity the [types of documents] to be seized, the warrant is indistinguishable
16 from the general warrants repeatedly held by this court to be unconstitutional.”
17 *United States v. Kow*, 58 F.3d 423, 427 (9th Cir. 1995) (alteration added).

18 For these reasons, the Government’s motion for reconsideration of this issue
19 is denied.

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1 **B. Overbreadth**

2 Next, the Government asks this Court to reconsider its determination that
 3 probable cause did not exist over the location to be searched. *See* ECF No. 48 at 4–
 4 5. Finding no manifest error, this Court denies the Government’s request for
 5 reconsideration of this issue.

6 “[P]robable cause means a fair probability that contraband or evidence of a
 7 crime will be found in a particular place, based on the totality of circumstances.””
 8 *SDI Future Health*, 568 F.3d at 703 (quoting *United States v. Diaz*, 491 F.3d 1074,
 9 1078 (9th Cir. 2007)); *see also Illinois v. Gates*, 462 U.S. 213, 238 (1983)
 10 (reaffirming “the totality-of-the-circumstances analysis that traditionally has
 11 informed probable cause determinations.”).

12 Here, the affidavit merely discloses that—after the controlled buy took place
 13 at a different location—a surveillance team tailed Contreras-Aguilar to a home in
 14 Warden, Washington. “No facts are recited from which it could be inferred that
 15 [Contreras-Aguilar was] other than [a] casual social guest[] at the residence.” *See*
 16 *United States v. Bailey*, 458 F.2d 408, 412 (9th Cir. 1972); *see also Greenstreet v.*
 17 *Cty. of San Bernardino*, 41 F.3d 1306, 1309 (9th Cir. 1994) (“Merely stating that
 18 [defendant] was surveilled to [a] residence, without any other information as to his
 19 activities [at that residence], ‘is not sufficient to permit an inference’ that
 20 [defendant] was other than a ‘casual social guest’ at [that] residence.”) (alterations

1 added) (quoting *Bailey*, 458 F.2d at 412).

2 The affidavit makes no connection between criminal activity for which
3 Contreras-Aguilar was under investigation and the Warden residence besides saying
4 that officers followed Contreras-Aguilar to the residence after the controlled buy.
5 *Cf. Greenstreet*, 41 F.3d at 1309–10. This Court disagrees with the Government that
6 its prior Order was internally inconsistent. ECF No. 48 at 4–5. Just because probable
7 cause existed to seize the Contreras-Aguilar from within the residence, does not
8 mean probable cause existed over the ‘location to be searched.’ Contreras-Aguilar
9 could have been there for many reasons, *Greenstreet*, 41 F.3d at 1309–10, and the
10 affidavit here does not support an inference that he stashed the controlled buy
11 money in some hidden location within the house. *But see* ECF No. 48 at 4–5. As
12 this Court may infer that Contreras-Aguilar was only a “casual social guest,”
13 *Greenstreet*, 41 F.3d at 1309–10, probable cause existed to seize him from the
14 residence and to search his person. Had the officers not found the prerecorded
15 money during the search incident to arrest, that may have supported a reasonable
16 inference (i.e., a fair probability) that the prerecorded buy money was somewhere
17 else, like the house or the vehicle. As it turned out, the prerecorded buy money was
18 on his person; it was in his wallet. But law enforcement only discovered the
19 prerecorded buy money after first conducting an general, exploratory search of the
20 entire house for money and documents.

1 The Government argues “nothing requires proof that the Defendant lived at
2 the residence.” ECF No. 48 (citing *United States v. Crews*, 502 F.3d 1130, 1137
3 (9th Cir. 2007) (finding the good faith reliance exception applicable and thus not
4 addressing whether the affidavit demonstrated that Crews was anything but a casual
5 social guest)). That may be true, but *Crews* relied on the “good faith” exception to
6 the probable cause requirement without “embarking on the exercise of determining
7 whether the affidavit supported probable cause.” *See* 502 F.3d at 1136. “[C]ourts
8 have discretion in deciding whether to address the issue of probable cause before
9 turning to the issue of good faith reliance.” *Id.* In this case, this Court exercised its
10 discretion and found, like *Greenstreet*, that the affidavit did not provide a
11 substantial basis for the state district court judge’s conclusion that the affidavit
12 supported probable cause to search residence. *Compare* ECF No. 47 at 13 (finding
13 “the only link to the residence described in the warrant involves the fact that
14 Contreras-Aguilar drove there after he sold the drugs to confidential informant”),
15 *with Greenstreet*, 41 F.3d at 1309 (holding the surveillance evidence only permits
16 an inference that defendant was a “casual social guest” of the residence). Given the
17 bare bones facts over the location to be searched, the totality of circumstances did
18 not support a fair probability that contraband or evidence of a crime would be found
19 anywhere other than on Contreras-Aguilar’s person. For these reasons, the
20 Government’s motion for reconsideration of this issue is denied.

1 **C. Good-Faith Reliance Exception**

2 Finally, the Government asks the Court to reconsider its determination that
3 the good-faith reliance exception does not apply. *See* ECF No. 48 at 6. The
4 Government argues “the Court misconstrued the standard that warrant must be ‘so
5 facially deficient . . . that the executing officers cannot reasonably presume it to be
6 valid.’” *Id.* (Government’s emphasis) (quoting *United States v. Underwood*, 725
7 F.3d 1076, 1085 (9th Cir. 2013)). This Court disagrees that it misconstrued the
8 standard.

9 “Given that the particularity requirement is set forth in the text of the
10 Constitution, no reasonable officer could believe that a warrant that plainly did not
11 comply with that requirement was valid.” *Groh v. Ramirez*, 540 U.S. 551, 563
12 (2004). The Court found the warrant here plainly did not comply with the
13 particularity requirement—it was both vague and overbroad. Because this Court
14 found the warrant here facially deficient (and thus by implication, no objective
15 officer could reasonably presume it to be valid), it concluded the Government’s
16 argument *per se* fails. *See* ECF No. 47; *see also United States v. Stubbs*, 873 F.2d
17 210, 212 (9th Cir. 1989) (holding because the warrant was facially invalid, law
18 enforcement could not have reasonably relied on it in good faith); *United States v.*
19 *Washington*, 797 F.2d 1461, 1473 (9th Cir. 1986) (holding because two sections of
20 the warrant were overbroad, that rendered the warrant so facially deficient that any

1 evidence obtained relying on either of them must be suppressed).

2 Following the hearing on the Government's motion for reconsideration, the
3 Government filed a notice of supplemental authority. ECF No. 53. The Government
4 directs this Court to *United States v. King*, No. 20-10007, 2021 WL 127828 (9th
5 Cir. Jan. 14, 2021), which cites a few cases discussing the good-faith reliance
6 standard. But this case helps the Government little.

7 *King* affirmed the district court's ruling denying defendant's motion to
8 suppress because it concluded the warrant was supported by probable cause and
9 was sufficiently particular. *See generally id.* It also held "the good-faith exception .
10 . . . justifies denying the suppression motion here." *Id.* at *5.

11 First, this Court finds that *King* is factually distinguishable. There, law
12 enforcement was investigating a suspect after a serious domestic-violence incident
13 in which the suspect pointed an unloaded gun at the victim's head and pulled the
14 trigger, grabbed a box of ammunition while the victim fled, and then chased the
15 victim down and struck her face. *Id.* at *1. The victim provided information to the
16 police about the suspect and the gun. *Id.* Afterward, law enforcement overheard a
17 jailhouse conversation in which the suspect essentially told the victim to give the
18 gun to King. *See id.* at *2. The victim admitted to law enforcement that she gave
19 the gun to King, and "described his appearance and phone number, the location of
20 his house, his live-in girlfriend, and his vehicles." *Id.* Because of King's two prior

1 felonies, law enforcement determined he was barred from possessing firearms. *Id.*
2 “[O]fficers observed King’s car parked at his residence—the place where the victim
3 said she delivered the firearm.” *Id.* “A judge then authorized the warrant, allowing
4 the search of King’s home for ‘[a]ny firearm’ and various other firearm-related
5 items.” *Id.*

6 The facts of this case are unlike *King*. The victim there told police that she
7 delivered the firearm to King’s house—where he lived. *See id.* Unlike the victim in
8 *King*, the confidential informant here did not relay any information about the
9 Warden residence to law enforcement. Law enforcement merely followed
10 Contreras-Aguilar to the residence after the controlled buy. The Court finds this
11 case is factually more like *Greenstreet*, 41 F.3d at 1309–10, than *King*.

12 Turning to the good-faith reliance exception, the *King* court cites *United*
13 *Kow*, 58 F.3d 423, *Davis v. United States*, 564 U.S. 229 (2011), and *United States*
14 *v. Leon*, 468 U.S. 897 (1984) for the standards governing the exception. The Court’s
15 prior Order properly cited the governing standard emanating from *Leon*. *See* ECF
16 No. 47 at 14–15. Nonetheless, the Court finds discussion of *Kow* will prove useful.

17 “Evidence seized pursuant to a facially valid search warrant which later is
18 held to be invalid may nevertheless be admissible if officers conducting the search
19 acted in good faith and in reasonable reliance on the warrant.” *Kow*, 58 F.3d at 428
20 (9th Cir. 1995) (citing *Leon*, 468 U.S. at 926). “The government bears the burden

1 of proving that reliance upon the warrant was objectively reasonable.” *Id.*

2 In *Kow*, “the warrant . . . listed entire categories of documents to be seized,
3 encompassing essentially all documents on the premises.” *Id.* at 428. The Ninth
4 Circuit noted that it has been “‘vigilant in scrutinizing officers’ good faith reliance
5 on such illegally overbroad warrants.’” *Id.* (quoting *Ortiz*, 887 F.2d at 1370). It
6 emphasized, “The warrant in this case is less particular than the warrant
7 in *Stubbs*, which also authorized seizure of ‘broad classes of documents without
8 specific description of the items to be seized.’” *Id.* (quoting *Stubbs*, 873 F.2d at
9 212). *Kow* held, “Because the warrant in this case was facially invalid, no
10 reasonable agent could have relied on it absent some exceptional circumstance.” *Id.*
11 at 428–29 (citation and internal quotation marks omitted). “The mere fact that the
12 warrant was reviewed by two AUSA’s [sic] and signed by a magistrate does not
13 amount to ‘exceptional circumstances.’” *Id.* at 429. Further, “[w]hen a warrant is
14 facially overbroad, absent *specific assurances* from an impartial judge or magistrate
15 that the defective warrant is valid despite its overbreadth, a reasonable reliance
16 argument fails.” *Id.* (emphasis in original).

17 This case is like *Kow*. The warrant authorized the seizure of a broad category
18 of dominion and control documents without a specific description of the items to be
19 seized. *See id.* at 428 (discussing *Stubbs*, 873 F.2d at 212). It also vaguely described
20 the prerecorded buy money subject to seizure when providing the exact description

1 of the buy money was possible. *See id.* at 427 (“[G]eneric classifications in a
2 warrant are acceptable only when a more precise description is not possible.”). Law
3 enforcement here knew exactly what they were looking for. *See VonderAhe*, 508
4 F.2d at 370. Although a state district court judge signed the warrant, which was
5 drafted by the lead detective in this case, that fact does not qualify as exceptional
6 circumstances. *See id.* at 429. And because the warrant here was facially overbroad,
7 and there were no *specific assurances* from an impartial judge or magistrate that the
8 defective warrant was valid despite its overbreadth, the Court finds the Government
9 has not met its burden of proving that reliance upon the warrant was objectively
10 reasonable. *See id.* at 428. For these reasons, the Government’s motion for
11 reconsideration of this issue is denied.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. The Government’s Motion for Reconsideration, **ECF No. 48**, is
14 **DENIED.**

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2. This Order hereby supplements the Court's prior Order granting defendant's motion to suppress, ECF No. 47, and both Orders shall be read in conjunction with one another.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 15th day of January 2021.

Salvador Mendoza
SALVADOR MENDOZA, JR.
United States District Judge